

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-676

December 3, 2002

MAINE PUBLIC SERVICE COMPANY
Request for Approval of Reorganization
Of the Company Structure into a
Holding Company structure

PROCEDURAL ORDER

A case conference in the above-referenced matter was held on November 20, 2002. Based on the discussions at the conference the following orders are entered.

I. INTERVENTION

A timely petition to intervene was filed by the Office of the Public Advocate (OPA). A petition for discretionary intervention, for the limited purpose of receiving filings and potentially filing a brief, was filed by Central Maine Power Company (CMP). Bangor Hydro-Electric Company (BHE) filed a request to be added as an interested person, receiving all filings. There being no objection and good cause appearing therefore, the petitions of the OPA, CMP and BHE are granted.

II. SCHEDULE

A. Phase I

In its petition for reorganization, Maine Public Service Company (MPS or Company) requested approval of the following transactions:

1. the creation of a corporation (HoldCo) that will become the parent company of MPS through its ownership of all outstanding company stock of MPS;
2. the creation of a corporation (MergeCo) whose only purpose will be to facilitate the corporate reorganization and which when organized will be a wholly owned subsidiary of HoldCo and which will cease to exist once it has served its purpose;
3. the conversion and exchange of all the outstanding shares of HoldCo's common stock to the degree that the conversion and exchange of MPS stock to be effected in that transaction is deemed to constitute as issuance of utility stock within the meaning of 35-A M.R.S.A. §§ 901 and 902;
4. the merger of MergeCo into the Company, with the Company as the surviving corporation, and the resulting conversion of the

outstanding shares of MergeCo common stock into a number of shares of common stock of the Company equal to the number of shares of the Company's common stock outstanding immediately prior to the share conversion described in item 3 above, which will be deemed issued by the Company for this purpose;

5. the dividend by Maine Public of its limited liability company interests in Energy Atlantic to HoldCo pursuant to 35-A M.R.S.A. §§ 708, 901 and 902;
6. the execution and delivery of the Managerial and Support Services Agreement and approval of the cost manual submitted in conjunction therewith pursuant to 35-A M.R.S.A. § 707;
7. the winding up and dissolving of M&NB at such future time as MPS might deem appropriate pursuant to 35-A M.R.S.A. § 708; and,
8. the transfer, after the Merger Date, (i) of assets that are not "necessary or usefull" within the meaning of Section 1101 of title 35-A, from MPS to any MPS affiliate, and (ii) the transfer of all other assets from MPS to Holdco or any non-MPS HoldCo subsidiary in the total amount of up to \$1,000,000 over the three-year period beginning upon the merger date.

Pursuant to the provisions of 35-A M.R.S.A. §708, the Commission must rule on a petition for reorganization within 180 days. The schedule set forth below has been developed with this statutory deadline in mind.

<u>Activity</u>	<u>Date</u>
Ruling on Request for Interim Approval	December 3, 2002
Data Requests on Company's Filing	December 10, 2002
Company Data Responses	December 24, 2002 (by noon)
Technical Conference on Company's Case	January 8, 2003 (9:00 a.m.)
Status Conference	January 17, 2003

Although not required by statute, the non-reorganization matters listed above will be processed in conjunction with MPS's petition for reorganization and in

accordance with the above schedule. It is hoped that the matters at issue in this case can be significantly narrowed at the status conference. Settlement conferences and/or additional litigation deadlines will be established based on the discussions at the status conference.

B. Phase II

At the case conference, the Hearing Examiner requested counsel for MPS to clarify whether as part of this proceeding MPS was requesting an exemption of approval requirements for further unspecified reorganizations since such a request seemed to be referenced in the body of the petition but was not listed in the petition's "Approvals Requested" sections. Counsel for MPS stated that such an exemption was requested and was listed on page 23 of the petition as a condition of approval for the reorganization. That condition, entitled "Subsequent Reorganizations," states:

The following entities shall be entitled to undertake activities which would otherwise constitute a reorganization of Maine Public (within the meaning of Section 708(1)(A)) without MPS having to secure Commission approval under Section 708: HoldCo, Energy Atlantic, non-Maine-utility entities that may become affiliates (within the meaning of Section 707 of Title 35-A) of HoldCo, Energy Atlantic and/or M&NB (including without limitation, (a) newly-formed direct and indirect subsidiaries of HoldCo and (b) entities more than ten percent of whose voting securities come to be owned by HoldCo, Energy Atlantic and newly formed direct and indirect subsidiaries of HoldCo and Energy Atlantic); provided that the foregoing exemption shall not apply in cases involving the issuance or transfer of voting securities of an entity that is, or is intended to become, a Maine public utility.

In the past, exemption requests such as the one requested by MPS, while seemingly straightforward, have proven to be complex and difficult to delineate. See *Central Maine Power Company, Et. Al., Request for Waiver From The Reorganization Requirements In 35-A M.R.S.A. § 708*, Docket No. 2001-447, Order at 3 (August 8, 2001).

The Examiner is mindful of MPS's desire to have all matters decided prior to the Company's annual shareholder meeting in May, 2003. Based on the statements of the Company in its petition, it does not appear, however, that the Company's request to organize into a holding company structure and its request that it be exempted from all future reorganizations other than those that create subsidiaries of MPS or create another utility are inextricably linked. Given the relatively short period of time allowed by statute to rule on MPS's reorganization request, the already expanded scope of matters to be considered during this period and the very broad nature of the exemption

requested, the Examiner concludes that it would not be in the public interest to attempt to process MPS's request that it be exempt from the approval requirements of Section 708 as part of the Phase I schedule, which must be completed by April 29, 2003. Should the Company's request for reorganization be approved, a Phase II schedule to process the Company's exemption request will be established immediately following the Commission's decision of approval with the objective of completing this aspect of the case as expeditiously as possible.

Dated at Augusta, Maine, this 3rd day of December, 2002.

BY ORDER OF THE HEARING EXAMINER

Charles Cohen